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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

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9 BERTON G. TOAVS,  
10 Petitioner,  
11 vs.  
12 ISIDRO BACA, et al.,  
13 Respondents.

Case No. 3:14-cv-00211-RCJ-VPC

**ORDER**

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15 The court directed petitioner to show cause why this action should not be dismissed as  
16 untimely. Order (#5). Petitioner has submitted a response (#9). Petitioner argues that he never has  
17 received any notice that on March 6, 2008, the Nevada Supreme Court had affirmed the denial of his  
18 state habeas corpus petition. Without knowing more about the proceedings in state court, this court  
19 accepts petitioner's argument for the moment, but respondents may raise the issue of timeliness later  
20 if they wish.

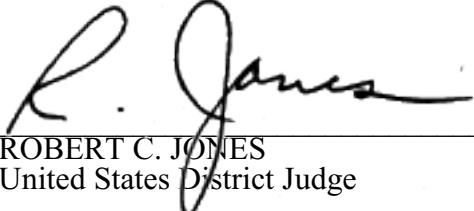
21 The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254  
22 Cases in the United States District Courts. The sole ground for relief is that the state courts took too  
23 long to decide petitioner's state habeas corpus petition. The ground is moot because on March 6,  
24 2008, six years before petitioner commenced this action, the Nevada Supreme Court affirmed the  
25 denial of the state habeas corpus petition. The court will give petitioner the opportunity to file an  
26 amended petition that alleges other grounds for relief.

27 IT IS THEREFORE ORDERED that the clerk of the court shall send petitioner a petition for  
28 a writ of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner shall have

1 thirty (30) days from the date that this order is entered in which to file an amended petition to  
2 correct the noted deficiencies. Neither the foregoing deadline nor any extension thereof signifies or  
3 will signify any implied finding of a basis for tolling during the time period established. Petitioner  
4 at all times remains responsible for calculating the running of the federal limitation period under 28  
5 U.S.C. § 2244(d)(1) and timely asserting claims. Failure to comply with this order will result in the  
6 dismissal of this action.

7 IT IS FURTHER ORDERED that petitioner shall clearly title the amended petition as such  
8 by placing the word "AMENDED" immediately above "Petition for a Writ of Habeas Corpus  
9 Pursuant to 28 U.S.C. § 2254" on page 1 in the caption, and petitioner shall place the case number,  
10 3:14-cv-00211-RCJ-VPC, above the word "AMENDED."

11 DATED: This 9<sup>th</sup> day of November, 2015.



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ROBERT C. JONES  
United States District Judge